

DOCKET NO.: THOM-0020 (RA/P301524US)
Application No.: 10/070,467
Office Action Dated: March 16, 2005

**PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116**

REMARKS

Claims 9-13, 15, and 16 are pending and under examination. The claims were subjected to a final rejection in the Office Action dated March 16, 2005. This response is accordingly being filed together with a Request for Continued Examination. Claim 16 has been amended herein to clarify the nature of the contact surfaces and the relative location of the contact surfaces to the medial plane. Support for the amendment can be found throughout the specification and in the drawing.

Telephonic Interview of May 25, 2005

A telephonic interview was conducted on May 25, 2005 between Examiner James Brittain and Applicant's undersigned representative. With respect to this application, the rejection of claim 16 over Malin (U.S. Patent No. 6,167,597) under 35 U.S.C. § 102(e) was discussed. Applicant thanks the Examiner for the courtesy and frankness extended during that interview.

Primarily, Applicant's representative noted that the prior Office Action suggested that the Examiner noted differences between the cited art and the claimed invention, and asked whether the examiner could suggest any amendments or direction for such amendments as to satisfy the Examiner that any such difference are expressed in the claim. The Examiner acknowledged that differences may exist with respect to the relative proportions and angles of the posts and heels relative to the prior art. The Examiner advised that he would consider after final amendments if timely filed and if he had time to adequately search, otherwise an RCE would be required.

No agreement was reached with respect to the claims.

Claim 16 is Novel and Not Anticipated by Malin

Independent claim 16 stands rejected under 35 U.S.C. §102(e) as allegedly anticipated by Malin (U.S. Patent No. 6,167,597). Applicant respectfully traverses the rejection in view of the amendment.

The Office Action alleges that Malin teaches a reclosable fastener comprising a first element 12 comprising a first elongate body portion 16, at least one first upstanding elongate

profiled member 18, 20 extending away from the first body portion, a first upstanding post comprising a wedge-shaped member 28 at a first lateral margin of the first body portion, and a first heel comprising an identically configured wedge-shaped member 28 at a second lateral margin of the first body portion, a second element 14 comprising a second elongate body portion 22, at least one second upstanding elongate profiled member 24, 26 extending away from the second body portion, a second upstanding post comprising a wedge-shaped member 32 at a first margin of the second body portion, and a second heel comprising an identically configured wedge-shaped member 32 at a second lateral margin of the second body portion; wherein the first and second profiled members are releasably engageable when the first and second elements are pressed together with the first and second profiled members facing each other in order to produce an engaged condition of the first and second elements; and wherein, in the engaged condition, both the first post and the second heel, and the second post and the first heel are aligned and arranged to contact each other at respective complementarily angled contact surfaces thereof to form a configuration which provides resistance to compressive forces exerted on the first and second elements in their engaged condition thereby substantially preventing distortion of the first and second profiled members under a load urging the first and second elements together in the engaged condition. The Office Action further alleges that pairs of contact surfaces can easily be chosen so as to lie to respective opposite sides of a median plane of separation lying between the first and second body portions, the contact surfaces being angled relative to the median plane and offset therefrom in respective opposite directions perpendicular thereto.

The Office Action notes that the claim language comprising is open ended and does not preclude additional elements.

Applicant notes the Office Action broadly reads the claim to allow the easy choice of pairs of contact surfaces noted above. Applicant has amended the claim to clarify that the pairs of contact surfaces referred to in the claim are at the *ends* of the respective posts and heels as shown in the drawing, and to further specify that these contact points must lie *entirely* to opposite sides of the medial plane of separation.

It is apparent from Malin that end contact surfaces of the posts do not make any contact with a complementarily angled end surface of the opposing heel. The opposing base where the end surface of Malin's posts contacts the elongate member cannot be deemed to be

complementarily angled. Further, the contacts points of the end surfaces of the posts or heels lie entirely on the same side of the medial plane. Therefore, Malin cannot be said to teach each and every element of the claimed invention, and thus does not anticipate the claimed invention.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejection under 35 U.S.C. §102(e), and withdrawal of the same.

The Claims are Patentable Over the Cited Art.

Claim 9-11 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Malin in view of Bentsen. Applicant respectfully traverses. Malin as discussed above does not teach each and every element of the claim, in particular Malin fails to teach end contact surfaces of the posts which make contact with a complementarily angled end surface of the opposing heel. Malin does not teach contacts points of the end surfaces of the posts or heels which lie entirely on the opposite sides of the medial plane. Bentsen does not provide these missing elements and thus neither reference nor the combination can render the claimed invention obvious.

Claims 12 and 13 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Malin in view of Bentsen and further in view of Custis. As discussed above the combination of Malin and Bentsen does not teach each and every element of the claimed invention. The addition of Custis does not overcome the failings of the prima facie case, and accordingly the three-way combination does not render the claimed invention unpatentable under 35 U.S.C. 103.

Claim 15 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Malin in view of Kapperman. As discussed above, Malin does not teach end contact surfaces of the posts which make contact with a complementarily angled end surface of the opposing heel, and it does not teach contacts points of the end surfaces of the posts or heels which lie entirely on the opposite sides of the medial plane. Kapperman does not provide these missing limitations. In addition, Kapperman does not teach a reclosable fastener, contrary to the assertion in the Office Action. The Kapperman reference is directed to tamper-evident packages which must be assembled by separately attaching the male member to a wall and the separately attaching the female member to a wall. Thus, the flange in Figure 11 is not

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inherently capable of attaching the complete "closure" to the wall, but rather at most is capable of attaching the female member to the wall.

Accordingly, the claims are not obvious in view of the cited references. Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. §103.

Conclusion:

Applicant respectfully asserts that this reply is fully responsive to the outstanding Office Action. The claims are in condition for allowance and a early and favorable Notice to that end is earnestly requested. The Examiner is invited to contact the Applicant's undersigned representative telephonically at 215-557-5986 to resolve any outstanding issues prior to allowance.

Respectfully submitted,

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